

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE POWER
SUPPLY AGREEMENT
BETWEEN IBAAN
ELECTRIC CORPORATION
(IEC) AND THERMA
LUZON, INC. (TLI), WITH
MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION AND
PRAYER FOR
PROVISIONAL AUTHORITY
OR INTERIM RELIEF**

ERC CASE NO. 2023-035 RC

**IBAAN ELECTRIC
CORPORATION (IEC) AND
THERMA LUZON, INC.
(TLI),**

Promulgated:
June 13, 2023

Applicants.

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NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 27 April 2023, Ibaan Electric Corporation (IEC) and Therma Luzon, Inc. (TLI) filed a *Joint Application* dated 01 April 2023, seeking the Commission's approval of their Power Supply Agreement (PSA), with motion for confidential treatment of information and prayer for provisional authority or interim relief.

The pertinent allegations of the *Joint Application* are hereunder quoted, as follows:

PARTIES

1. Applicant IEC is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with its principal office located at Metro-Rei Business Park, Palindan, Ibaan, Batangas. It is a franchised distribution utility engaged in the distribution of electricity and presently operates within the franchise area covering the Municipality of Ibaan, Brgy. Salaban in the municipality of San Jose, and Brgy. Adya in the City of Lipa, all in the Province of Batangas.
2. Applicant TLI is a private corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at NAC Tower, 32nd Street, Bonifacio Global City, Taguig City. TLI is the Independent Power Producer Administrator (IPPA) for the 700 MW capacity from the Pagbilao Coal Fired Thermal Power Plant (Power Plant) pursuant to and in accordance with its IPPA Agreement with the Power Sector Assets and Liabilities Management Corporation (PSALM) with the conformity of the National Power Corporation (NPC). As such, TLI has the right to trade, sell, or deal with the 700 MW contracted capacity of the said Power Plant.
3. Applicants may be served with notices, orders, and other processes of this Honorable Commission through their respective counsel at the addresses indicated below.

STATEMENT OF FACTS

1. [*sic*] Applicant IEC sources the bulk of its electricity requirements from TLI under another Power Supply Agreement (PSA) for the delivery of energy for the period covering 26 April 2013 up to 25 April 2023, subject of ERC Case No. 2013-081RC¹.
2. In order to address the upcoming expiration of the said PSA and, consequently, the need to procure power supply for its energy requirements, IEC conducted a Competitive Selection Process (CSP) to procure power supply for a period of five (5) years, based on the Department of Energy (DOE) Department Circular No. DC2018-02-0003², as amended by DOE DC2021-09-0030³.

¹ Entitled, "In the Matter of the Application for Approval of the Power Supply Agreement Between Ibaan Electric and Engineering Corporation, Inc. and Therma Luzon, Inc."

² Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market otherwise known as "CSP Rules".

³ Amending Certain Provisions of and Supplementing Department Circular No. DC2018-02-0003 on the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market.

3. In said CSP conducted by IEC to procure power supply, TLI's offer was declared as the lowest calculated responsive bid after successfully passing the evaluation conducted by the Technical Working Group (TWG) and the Third Party Bids and Awards Committee (TPBAC) of IEC.
4. The TWG and TPBAC of IEC recommended to award the contract to TLI, and the recommendation was approved by IEC's Board of Directors through Board Resolution No. No. 3, Series of 2023.
5. Subsequently, a Notice of Award dated 13 February 2023 was issued by IEC in favor of TLI. IEC and TLI executed a Power Supply Agreement (PSA) with a term of five (5) years commencing from the Effective Date, subject to the satisfaction, by Closing Date, of the identified conditions precedent.
6. Hence, this instant *Joint Application* for the approval of the PSA between IEC and TLI.

SALIENT TERMS OF THE PSA

7. The PSA between IEC and TLI, a copy of which is attached as ANNEX "A", contains the following salient features:
 - 7.1. Contract Period. The PSA shall take effect immediately from Effective Date until the end of the Contract Period on 25 April 2028.

"Effective Date" means the date of execution of the PSA, as set out below the respective signature of the Parties; provided, however, that if the Parties executed shall have executed the PSA on separate dates, the Effective Date shall be the later of the dates on which each Party executed this PSA.
 - 7.2. Contract Capacity and Contract Energy. Cont[r]act Capacity refers to the capacity, expressed in kilo-Watts ("kW"), allocated to IEC during the Billing Period, in quantities specified in Schedule 3.1.4 (Rates Schedule), subject to the provisions on Force Majeure. It is the maximum kW demand that IEC may nominate as Bilateral Contract Quantity in any WESM Trading Interval.

"Contract Energy" refers to the Minimum and Maximum Contract Energy quantity in kilowatt-hours per Billing Period as set out in Schedule 3.1.1 (Delivery Schedule).

"Minimum Contract Energy " refers to the minimum Energy quantity in kilowatt-hours that IEC shall receive or pay for per Billing Period as provided in Schedule 3.1.1 (Delivery Schedule).

“Maximum Contract Energy” refers to the maximum Energy quantity in kilowatt-hours that IEC may draw per Billing Period as provided in Schedule 3.1.1 (*Delivery Schedule*).

Contract Capacity, as well as the Minimum and Maximum Contract Energy are shown in Schedule 3.1.1 (*Delivery Schedule*) of the PSA, *to wit*:

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Schedule 3.1.1 – Delivery Schedule

BILLING MONTH	CONTRACT CAPACITY PER INTERVAL (kW)	MINIMUM CONTRACT ENERGY PER BILLING PERIOD (kWh)	MAXIMUM CONTRACT ENERGY PER BILLING PERIOD (kWh)
April 26, 2023 - May 25, 2023	8,485	3,237,876	6,109,200
May 26, 2023 - June 25, 2023	8,794	3,467,650	6,542,736
June 26, 2023 - July 25, 2023	8,586	3,276,418	6,181,920
July 26, 2023 - August 25, 2023	8,359	3,296,121	6,219,096
August 26, 2023 - September 25, 2023	8,150	3,213,708	6,063,600
September 26, 2023 - October 25, 2023	8,030	3,064,248	5,781,600
October 26, 2023 - November 25, 2023	7,786	3,070,176	5,792,784
November 26, 2023 - December 25, 2023	7,526	2,871,922	5,418,720
December 26, 2023 - January 25, 2024	7,176	2,829,640	5,338,944
January 26, 2024 - February 25, 2024	6,906	2,723,174	5,138,064
February 26, 2024 - March 25, 2024	7,440	2,744,467	5,178,240
March 26, 2024 - April 25, 2024	8,370	3,300,458	6,227,280
April 26, 2024 - May 25, 2024	9,070	3,461,112	6,530,400
May 26, 2024 - June 25, 2024	9,326	3,677,428	6,938,544
June 26, 2024 - July 25, 2024	9,045	3,451,572	6,512,400
July 26, 2024 - August 25, 2024	8,791	3,466,467	6,540,504
August 26, 2024 - September 25, 2024	8,629	3,402,587	6,419,976
September 26, 2024 - October 25, 2024	8,478	3,235,205	6,104,160
October 26, 2024 - November 25, 2024	8,215	3,239,339	6,111,960
November 26, 2024 - December 25, 2024	7,925	3,024,180	5,706,000
December 26, 2024 - January 25, 2025	7,530	2,969,230	5,602,320
January 26, 2025 - February 25, 2025	7,295	2,876,564	5,427,480
February 26, 2025 - March 25, 2025	7,859	2,799,061	5,281,248
March 26, 2025 - April 25, 2025	8,897	3,508,265	6,619,368
April 26, 2025 - May 25, 2025	9,655	3,684,348	6,951,600
May 26, 2025 - June 25, 2025	9,858	3,887,207	7,334,352
June 26, 2025 - July 25, 2025	9,503	3,626,345	6,842,160
July 26, 2025 - August 25, 2025	9,223	3,636,813	6,861,912
August 26, 2025 - September 25, 2025	9,108	3,591,467	6,776,352
September 26, 2025 - October 25, 2025	8,926	3,406,162	6,426,720
October 26, 2025 - November 25, 2025	8,643	3,408,108	6,430,392
November 26, 2025 - December 25, 2025	8,325	3,176,820	5,994,000
December 26, 2025 - January 25, 2026	7,883	3,108,425	5,864,952
January 26, 2026 - February 25, 2026	7,684	3,029,955	5,716,896
February 26, 2026 - March 25, 2026	8,278	2,948,292	5,562,816
March 26, 2026 - April 25, 2026	9,424	3,716,072	7,011,456
April 26, 2026 - May 25, 2026	10,240	3,907,584	7,372,800
May 26, 2026 - June 25, 2026	10,390	4,096,985	7,730,160
June 26, 2026 - July 25, 2026	9,962	3,801,499	7,172,640
July 26, 2026 - August 25, 2026	9,656	3,807,554	7,184,064
August 26, 2026 - September 25, 2026	9,587	3,780,346	7,132,728
September 26, 2026 - October 25, 2026	9,374	3,577,118	6,749,280
October 26, 2026 - November 25, 2026	9,072	3,577,271	6,749,568
November 26, 2026 - December 25, 2026	8,724	3,329,078	6,281,280
December 26, 2026 - January 25, 2027	8,236	3,247,620	6,127,584
January 26, 2027 - February 25, 2027	8,073	3,183,345	6,006,312
February 26, 2027 - March 25, 2027	8,697	3,097,524	5,844,384
March 26, 2027 - April 25, 2027	9,951	3,923,878	7,403,544
April 26, 2027 - May 25, 2027	10,825	4,130,820	7,794,000
May 26, 2027 - June 25, 2027	10,922	4,306,763	8,125,968
June 26, 2027 - July 25, 2027	10,421	3,976,654	7,503,120
July 26, 2027 - August 25, 2027	10,088	3,977,900	7,505,472
August 26, 2027 - September 25, 2027	10,066	3,969,225	7,489,104
September 26, 2027 - October 25, 2027	9,822	3,748,075	7,071,840
October 26, 2027 - November 25, 2027	9,501	3,746,434	7,068,744
November 26, 2027 - December 25, 2027	9,123	3,481,337	6,568,560
December 26, 2027 - January 25, 2028	8,589	3,386,814	6,390,216
January 26, 2028 - February 25, 2028	8,462	3,336,736	6,295,728
February 26, 2028 - March 25, 2028	9,116	3,362,710	6,344,736
March 26, 2028 - April 25, 2028	10,478	4,131,685	7,795,632

TLI shall ensure the sufficient and continuous supply of the electric power required by IEC up to the Maximum Contract Energy and that such supply shall be in accordance with good utility practice and compliant with the appropriate rules and regulations, as imposed by the appropriate government agency, affecting the supply of power.

- 7.3. Scheduled Outages. TLI is allowed Allowable Downtime as provided in item 4 of Schedule 4.1 not to exceed a total of four hundred and seventy-four (474) cumulative hours for each Contract Year. Any unutilized scheduled outages cannot be carried over to the immediately succeeding year or to any future year within the contract term.

In the event of failure of TLI to provide the replacement power, IEC shall be allowed to find replacement power but shall be for the account of TLI and subject to the payment of administrative fee of Php 0.35/kWh, without the need to secure prior approval from TLI.

- 7.4. Replacement Power. Notwithstanding any provision in PSA to the contrary, TLI has the right, at its sole discretion, to source Replacement Power from any available alternative sources. During Scheduled Outages and Unscheduled Outages within the Allowable Downtime of TLI, it shall provide Replacement Power to IEC at the WESM Price and Incidental Costs. During Scheduled Outages and Unscheduled Outages beyond the Allowable Downtime of TLI, it shall provide Replacement Power to IEC, for which TLI shall charge IEC according to the terms specified in Schedule 3.1.4(*Rates Schedule*).

- 7.5. Payment of Fees. The monthly invoice for the Contract Charges payable by IEC to TLI shall contain an itemized billing statement of the Contract Capacity and Associated Energy in accordance with this PSA.

The monthly invoices shall be served upon IEC not later than the tenth (10th) day of the succeeding Billing Month and must be paid without the necessity of demand not later than the twenty-fifth (25th) day of the calendar month following the current Billing Month (Payment Due Date). Payments shall be made to the authorized banks/collectors of TLI, without need for prior demand on or before Payment Due Date.

Monthly fuel cost computation must be included in the monthly billing invoices.

In the event that any amount due to TLI under or in connection with this PSA remains unpaid after its Payment Due Date and or the grace period of three (3) months lapsed, IEC shall, among others, pay a penalty

of two percent (2%) per month (a fraction of a month to be considered one month) based on the amount due, from the date when such payment is due until the date such amount is received in full by TLI.

- 7.6. Security Deposit. In the event that IEC fails to pay the Electricity Fees or any other amounts payable by it under this Agreement in full on the due date, TLI shall have the right to require IEC to post a Security Deposit, whereupon, IEC shall establish, not later than fifteen (15) business days from receipt of TLI's notice to this effect, the Security Deposit which shall be valid for at least twelve (12) Billing Periods, and with a face value computed in accordance with the formula set out in Schedule 3.2.5.1 (Security Deposit); provided that, for the final Contract Year, IEC shall post a Security Deposit which shall be valid until sixty (60) calendar days after the end of the Contract Period.

The Security Deposit must be provided in one of the following forms: cash, electronic fund transfer, cash bond, manager's or cashier's check, bank certified check, irrevocable stand-by letter of credit, or bank guarantee callable on demand issued by a reputable financial institution acceptable to TLI. All costs and interest earned by the Security Deposit shall be the responsibility of IEC.

In the event that TLI draws against the Security Deposit, IEC shall replenish the Security Deposit to restore the value thereof to its original amount, on the business day immediately following the date TLI shall have made a drawing thereon.

- 7.7. Government Charges. IEC shall be liable for and pay (i) any and all taxes (including value-added tax, if any), fees, charges, levies and imposts imposed or assessed by any Governmental Authority on or in connection with the purchase and sale of electricity and/or payments due to TLI hereunder, and (ii) any new taxes, fees, charges, levies and imposts (including any increase in the rate or amount thereof after the date hereof but excluding income taxes imposed on TLI and fines and penalties directly attributed to TLI's gross negligence) after the date hereof in connection with the performance by TLI of its obligations pursuant to this PSA. Such payments shall be made as and when required pursuant to Applicable Laws in effect from time to time. This does not include TLI's own income taxes.
- 7.8. Contract Charges. Contract charges refers to the total amount payable by IEC to TLI for the Contract Energy, Bilateral Contract Quantity and other charges under this PSA covering each Billing Period.

The computation of Electricity Fees contained in Schedule 3.1.4 (Rates Schedule) of the PSA is as follows:

Schedule 3.1.4 – Rates Schedule

Electricity Fees = A + B + C + D + E

All computations on payments to TLI shall not be rounded off, except for the final PHP amount, which shall be rounded off to the nearest Philippine centavo.

Where:

A = CRF x TED

CRF = The corresponding CRF for a given Capacity Utilization Factor is set forth in the table below:

Capacity Utilization Factor (%)	CRF (PhP /kWh)
100%	1.1644
99%	1.1761
98%	1.1881
97%	1.2004
96%	1.2129
95%	1.2257
94%	1.2387
93%	1.2520
92%	1.2656
91%	1.2795
90%	1.2938
89%	1.3083
88%	1.3232
87%	1.3384
86%	1.3539
85%	1.3699
84%	1.3862
83%	1.4029
82%	1.4200
81%	1.4375
80%	1.4555
79%	1.4739
78%	1.4928
77%	1.5122
76%	1.5321
75%	1.5525
74%	1.5735
73%	1.5950
72%	1.6172
71%	1.6400
70%	1.6634
69%	1.6875
68%	1.7123
67%	1.7379
66%	1.7642
65%	1.7914
64%	1.8193
63%	1.8482
62%	1.8780
61%	1.9088

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Capacity Utilization Factor (%)	CRF (PhP /kWh)
60%	1.9406
59%	1.9735
58%	2.0076
57%	2.0428
56%	2.0793
55%	2.1171
54%	2.1563
53%	2.1970

TED = the total energy Delivered (in kWh) within CC per Trading Interval and within Maximum Contract Energy per Billing Period during the current Billing Period

$$B = FOM \times TED$$

$$FOM = \text{Base FOM} \times \frac{RPCPI_{y-1}}{RPCPI_0}$$

Base FOM = The corresponding CRF for a given Capacity Utilization Factor is set forth in the table below:

Capacity Utilization Factor (%)	FOM (PhP /kWh)
100%	0.1470
99%	0.1484
98%	0.1500
97%	0.1515
96%	0.1531
95%	0.1547
94%	0.1563
93%	0.1580
92%	0.1597
91%	0.1615
90%	0.1633
89%	0.1651
88%	0.1670
87%	0.1689
86%	0.1709
85%	0.1729
84%	0.1750
83%	0.1771
82%	0.1792
81%	0.1814
80%	0.1837
79%	0.1860
78%	0.1884
77%	0.1909
76%	0.1934
75%	0.1959
74%	0.1986
73%	0.2013
72%	0.2041
71%	0.2070
70%	0.2099
69%	0.2130
68%	0.2161
67%	0.2193
66%	0.2227

Capacity Utilization Factor (%)	FOM (PhP /kWh)
65%	0.2261
64%	0.2296
63%	0.2333
62%	0.2370
61%	0.2409
60%	0.2449
59%	0.2491
58%	0.2534
57%	0.2578
56%	0.2624
55%	0.2672
54%	0.2721
53%	0.2773

RPCPI_{y-1} = the Philippine Consumer Price Index for All Income Households in the Philippines –All Items (2018=100) published as of the end of December for year y-1, the year prior to which the Invoice is being prepared

RPCPI₀ = the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2018=100) of of (sic) December 2022 = 119.40

TED = as previously defined

C = VOM x TED

VOM = Base VOM x $\frac{RPCPI_{y-1}}{RPCPI_0}$

Base VOM = 0.1042 Php/kWh

RPCPI_{y-1} = as previously defined

RPCPI₀ = as previously defined

TED = as previously defined

D = Fuel x TED

Fuel = Base x $[(95.76\% \times \frac{N_m}{N_o} \times \frac{FX_m}{FX_o}) + (2.60\% \times \frac{FX_m}{FX_o}) + 1.64\%]$ Php/kWh

Base = 8.5957 Php/kWh

N_m = the average Newcastle index (USD/MT) for the last three calendar months prior to the Billing Period for which the Invoice is being prepared, as posted by globalCOAL on the website www.globalcoal.com or its successor or, if globalCOAL ceases to report the Newcastle Index, an agreed upon replacement source that reports the Newcastle Index shall be adopted by the Parties

N_o = the Newcastle index of 404.07 USD/MT

FX_m = the average of the PHP/USD exchange rate for the last three calendar months prior to the Billing Period for which the invoice is being prepared, as published in the Bangko Sentral ng Pilipinas website

FX_o = the PHP/USD exchange rate of 55.68

In the event that revisions are made on the above indices, including any shift made in the base year and other adjustments to such index made by the relevant authorized entity, its successor-in-interest, there shall be a corresponding change in the base index such that the use of the revised index will yield the equivalent values as the use of the original base index.

In the event that the index (a) becomes unavailable, (b) is replaced by a new benchmark rate as determined by the relevant authorized entity, its successor-in-interest, or (c) ceases to exist, or (d) in the reasonable determination of either Party, fails to reflect the real costs and forms an integral part of this price mechanism, the Parties shall agree to adopt a new price Index.

TED = as previously defined

E = all future taxes, fees and imposts (including increases, or adjustments thereon and increases, or adjustments on existing taxes, fees and imposts), such as but not limited to real property taxes, excise taxes, and other future charges imposed on the Power Plant for the generation of electricity, in Philippine Pesos

- 7.9. Prompt Payment Discount (PPD). IEC shall be entitled to a Prompt Payment Discount (PPD) equivalent to 0.02P/kWh automatic adjustment on the generation rate as contained in the current bill/electricity bill, excluding pass on charges (i.e., market fees) provided that full payment is received not later than ten (10) days upon receipt of the Billing Statement, and provided that IEC has no unpaid power bill.

In the event that the approval by the ERC of the PSA (whether such approval is provisional or otherwise) shall have the effect of impairing the Electricity Fees due under the Agreement or any terms and conditions of the Agreement, IEC shall not be entitled to any discount provided under the PSA.

8. The Applicants submit the following documents for the evaluation of the Joint Application:

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Description of Document	Annex
Power Supply Agreement (PSA) between IEC and TLI dated 9 March 2023.	"A"
Expiring PSA between IEC and TLI dated 25 January 2013	"A-1"
IEC's Amended Articles of Incorporation and By-Laws	"B" and "B-1"
IEC's General Information Sheet	"C"
IEC's Verified Certification showing the list of Board of Directors and Board Members	"D"
IEC's Demand Side Management Program	"E"
IEC's Write-up on Non-Applicability of Transition Supply Contract with the National Power Corporation	"F"
IEC's Historical and Forecasted Consumption Data (Distribution Development Plan 2023)	"G"
IEC's Power Supply Procurement Plan 2022	"G-1"
IEC's Supply and Demand Scenario and Average Daily Load Curve	"H"
IEC's Performance Assessment of the System (SAIFI and SAIDI)	"I"
IEC's Certification on Potential for a Reduction in Load Supply	"J"
IEC's Rate Impact Calculation and Rate Impact Simulation	"K"
IEC's Invitation to Bid for the Procurement of Power Supply for its Baseload Requirements	"L"
DOE Certification of Posting No. DOE-EPIMB-CSP-COP-2022-10-027; IEC Letter dated 3 October 2022 Requesting for Approval of its TOR; and DOE Letter dated 15 November 2022 approving IEC's TOR	"M", "M-1" and "M-2"
IEC's Terms of Reference	"N"
IEC's Instruction to Bidders	"N-1"
IEC's Draft PSA	"N-2"
IEC's Proposals received by the Distribution Utility, Tender Offers, etc.- Comparative Bid Abstract	"O"
IEC's Third Party Bids and Awards Committee Resolution No. 1, Series of 2023, Declaring the Lowest Calculated and Responsive Bids and Recommending Award of Contract for the Procurements of 6.91MW up to 10.92MW Power Supply Requirements	"P"
IEC's Board Resolution No. 3, Series of 2023, Approving and Confirming the Results of the Evaluation of Bids and Post-Qualification and the Award of Contract to TLI	"Q"
Notice of Award issued by IEC to TLI dated 13 February 2023	"R"

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IEC's Matrix and Type of CSP	"S"
IEC's Certification on the Conduct of CSP dated 2 March 2023	"T"
TLI's Certificate of Incorporation, Amended Articles of Incorporation and By-Laws	"U" and "U-1"
TLI's General Information Sheet ("GIS")	"V"
TLI's Verified Certification showing the list of Board of Directors dated 18 November 2022	"W"
TLI's Diagram of Corporate Structure/Organizational Chart	"X"
TLI's Board of Investments ("BOI") Certificate of Registration No. 2010-052	"Y"
TLI's Environmental Compliance Certificate ("ECC") Ref. No. ECC-CO-1311-0037	"Z"
Certificate of Compliance ("COC") No. 19-07-M-00040L for the Pagbilao Coal Fired Thermal Power Plant	"AA"
TLI's Legal Opinion on DOE PDP and/or COE dated 24 February 2022	"BB"
TLI's Transmission Service Agreement with National Grid Corporation of the Philippines ("NGCP")	"CC"
TLI's Connection Agreement with NGCP	"DD"
TLI's Metering Services Agreement with NGCP	"EE"
Executive Summary of the IEC-TLI PSA	"FF"
TLI's Sources of Funds (Confidential)*	"GG"
TLI's Generation Rate and Derivation (Confidential)*	"HH"
TLI's Cash Flow (Confidential)*	"II"
TLI's Financial Model (Confidential)*	"JJ"
TLI's O&M Breakdown and Description (Confidential)*	"JJ-1"
Sample Bill	"KK"
TLI's Write-up on Relevant Technical and Economic Characteristics of the Generation Capacity	"LL"
TLI's Write-up on Inconsistency in Capacity	"MM"
TLI's 2021 Audited Financial Statements	"NN"
TLI's Write-Up on the Non-Applicability of the following: <ul style="list-style-type: none"> ● Shareholders' Agreement; ● Renewable Energy Service Contract/ Operating Contract from the DOE ● Certificate of Registration or Certification of Confirmation of Commerciality by an RE Developer and after due confirmation by the DOE 	"OO"

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<ul style="list-style-type: none"> • Water Permit from the National Water Resources Board • Copy of Related Agreements (such as Transmission Wheeling Contract, EPC Contract, O&M Contract, Wholesale Aggregator Agreement, Project Feasibility Study); • Certification from the Bank/Lending Institution for Loans • Equivalent Php/kWh with assumptions for foreign-denominated rates • Potential cost (absolute amounts and Php/kWh) of Ancillary Services as when the IPP or the DU is connected to the main grid • If different from previously filed PSA, updated costs • Distribution Wheeling Service Agreement (for embedded generators), if applicable 	
TLI's Certification of the Net Heat Rate kCal per kWh <i>(Confidential)</i> *	"PP"
TLI's Coal Supply Agreement <i>(Confidential)</i> *	"QQ"
TLI's Coal Sale and Purchase Agreement <i>(Confidential)</i> *	"RR"
Sworn Statement Re: TLI's Explanation on Coal Procurement Process <i>(Confidential)</i> *	"SS"
TLI's WESM Registration Approval Form	"TT"
IEC's Write Up on Non-applicability of WESM Registration Certificate	"TT-1"
TLI's Single Line Diagram Connection	"UU"
IEC's Single Line Diagram Connection	"UU-1"
Affidavit of IEC's General Manager, Mr. John Michael A. Yap, to support the Applicants' Prayer for Provisional Authority	"VV"

* *Subject of the Motion for Confidential Treatment of Information*

MOTION FOR CONFIDENTIAL TREATMENT OF ANNEXES
"GG", "HH", "II", "JJ", "JJ-1", "PP", "QQ", "RR", and "SS"

9. Under the ERC Rules of Practice and Procedure, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential.⁴ Pursuant to this, TLI prays for the confidential treatment of the information contained in the following annexes:

Documents and/or Information	Annex
TLI's Sources of Funds <i>(Confidential)</i> *	"GG"
TLI's Generation Rate and Derivation <i>(Confidential)</i> *	"HH"

⁴ Section 1, Rule 4, Rules of Practice and Procedure of the Energy Regulatory Commission.

TLI's Cash Flow (Confidential)*	"II"
TLI's Financial Model (Confidential)*	"JJ"
TLI's O&M Breakdown and Description (Confidential)*	"JJ-1"
TLI's Certification of the Net Heat Rate kCal per kWh (Confidential)*	"PP"
TLI's Coal Supply Agreement (Confidential) *	"QQ"
TLI's Coal Sale and Purchase Agreement (Confidential) *	"RR"
Sworn Statement Re: TLI's Explanation on Coal Procurement Process (Confidential) *	"SS"

10. Annexes "GG", "HH", "II", "JJ", "JJ-1", "PP", "QQ", "RR", and "SS" contain information and data where TLI has actual and valuable proprietary interest to protect with respect to such information, and fall within the bounds of "trade secrets" that are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.

10.1. The foregoing annexes contain non-public, proprietary information and data involving TLI's investments, business operations, and financial calculations. TLI determines its competitive rates through its power rate calculations and its financial model through these information, thus, the methodology thereof is privileged and confidential in nature. Furthermore, these information and data are not generally available to the public. TLI's competitiveness will seriously be prejudiced if this information is unduly disclosed.

10.2. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*,⁵ the Supreme Court defined "trade secrets" and explained that:

"A trade secret is defined as a **plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it.** The definition also extends to a **secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value.** A trade secret may consist of any **formula, pattern, device, or compilation of information** that: (1) is **used in one's business**; and (2) **gives the employer an opportunity to obtain an**

⁵ 564 Phil. 774 (2007), G.R. No. 172835.

advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights.”
(Emphasis supplied.)

- 10.3. Moreover, the Honorable Commission categorically acknowledged in its Decision in ERC Case No. 2015-111 RC⁶ that formulas and pricing structures of a generation company must be accorded confidential protection, to *wit*:

“In the case of PNOC RC, the documents sought to be protected from disclosure contain formula and pricing structures used in arriving at their proposed tariff. In fact, all three (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. **In the electric power industry w(h)ere prices is[sic] a major consideration in selecting one’s supplier, it is apparent that the assumptions used in arriving at one’s proposed tariff is considered a competitive leverage by one player against its competitors.**

Thus, the Commission resolves to treat the said documents confidential and may not be publicly disclosed.” *(Emphasis supplied).*

- 10.4. Clearly, the Honorable Commission recognizes the importance of treating pricing structures as confidential in order to ensure competitiveness of the generation sector. This information, which falls within the definition of a trade secret as defined by jurisprudence, merits the confidential treatment provided for under Rule 4 of the ERC Rules of Practice and Procedure.
11. Applicants hereby submit one (1) copy of their respective confidential documents in a sealed envelope, with the

⁶ Decision, ERC Case No. 2015-111 RC dated 30 May 2017 entitled “*In the Matter of the Application for Approval of the Power Supply Agreement Between Nueva Ecija II Electric Cooperative, Inc.- Area 2 (NEECO II – Area 2) and PNOC Renewables Corporation (PNOC RC).*”

envelope and each page of the document stamped with the word “Confidential”.⁷

ALLEGATIONS IN SUPPORT OF THE PRAYER FOR PROVISIONAL AUTHORITY OR INTERIM RELIEF

12. Under Rule 14 of the ERC Rules of Practice and Procedure, the Honorable Commission is authorized to issue provisional authority or interim relief prior to a final decision, provided the facts and circumstances alleged warrant such remedy.
13. TLI calculated the rate impact of the subject PSA with TLI and compared it with the generation rate IEC solely sources its power supply requirements from WESM⁸, as follows:

	w/o TLI	w TLI
MWh Purchase*		
TLI	0	3,827.71
WESM	3,827.71	0
Total	3,828	3,828
Power Cost (Php)		
TLI	0	37,643,772
WESM	38,582,551	0
Total	38,582,551	37,643,772
Generation Rate	10.0798	9.8345
Rate Impact		-0.2453

Note: (1) Assumed at 100% CUF
(2) WESM rate used is the effective WESM rate for January 2023 for a DU in the same area/ region as IEC

14. As shown in the comparative scenario of the Rate Impact Calculation, the PSA between IEC and TLI will benefit IEC and its consumers with an estimated generation rate reduction of Php0.2453/kWh versus IEC’s generation rate if it purchases its power supply requirements solely from WESM.
15. Considering that IEC’s existing PSA with TLI will expire on 25 April 2023, the immediate implementation of the subject PSA with TLI will afford IEC’s end-users with a continuous and reliable supply of electricity at affordable rates. Likewise, the early implementation of the PSA will reduce IEC’s exposure to the volatility of the prices in WESM.
16. The grant of a provisional authority or interim relief will allow IEC to have a steady, continuous, guaranteed and reliable source of electricity, which will immediately redound to the benefit of IEC’s end-users in terms of providing a more affordable rate. To support the Motion for Provisional Authority, the Affidavit of IEC’s General Manager, Mr. John

⁷ Soft copies of the same to be provided to this Honorable Commission are password protected.

⁸ See Rate Impact Calculation attached as Annex “K”.

Michael A. Yap, is attached as Annex "VV" of this *Joint Application*.

PRAYER

WHEREFORE, premises considered, Applicants IBAAN ELECTRIC CORPORATION (IEC) and THERMA LUZON, INC. (TLI) respectfully pray that the Honorable Commission:

- (i) ISSUE an Order treating Annexes "GG", "HH", "II", "JJ", "JJ-1", "PP", "QQ", "RR", and "SS" as confidential in perpetuity, directing their non-disclosure to persons other than the officers and staff of the Honorable Commission, perpetually protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons, pursuant to Rule 4 of its Rules of Practice and Procedure;
- (ii) Pending trial on the merits, GRANT provisional authority or interim relief allowing the implementation of the PSA including all the rates, fees, charges, and tariff adjustment mechanisms set out therein at the rates provided in the PSA and authorizing IEC to charge and collect such rates, fees, charges, and tariff adjustment therein from its customers reckoned from the start of the supply by TLI to IEC under the PSA subject of this application; and
- (iii) After hearing on the merits, ISSUE a Decision APPROVING the Joint Application and PSA between IEC and TLI, including all the rates, fees, charges, and tariff adjustment mechanisms set out therein at the rates provided in the PSA, and authorizing IEC to charge and collect such rates, fees, charges, and tariff adjustments therein from its customers reckoned from the start of the supply by TLI to IEC under the PSA.

Other relief just and reasonable are likewise prayed for.

In an *Order* and a *Notice of Virtual Hearing*, both dated 09 May 2023, the Commission has set the instant *Joint Application* for hearing on the following dates: (1) 13 June 2023 for the determination of compliance with jurisdictional requirements and expository presentation; and (2) 20 June 2023 for the Pre-trial Conference and presentation of evidence.

On 24 May 2023, TLI filed a *Manifestation with Urgent Motion to Revise Order and Notice of Virtual Hearing* (Manifestation with Urgent Motion, noting that there are missing rows in Schedule 3.1.1 – Delivery Schedule shown in page 4 of the *Notice of Virtual Hearing*

dated 09 May 2023. Thus, TLI prayed that the Commission make the necessary revisions in the *Order* and *Notice of Virtual Hearing* dated 09 May 2023.

In an *Order* and a *Notice of Virtual Hearing*, both dated 29 May 2023, the Commission granted TLI's *Manifestation with Urgent Motion* and set anew the instant *Joint Application* for hearing on the following dates: (1) 20 June 2023 for the determination of compliance with jurisdictional requirements and expository presentation; and (2) 27 June 2023 for the Pre-trial Conference and presentation of evidence.

However, on 06 June 2023, TLI filed a *Manifestation with Urgent Motion to Reset Hearing* (Second *Manifestation with Urgent Motion*), praying that the hearings be reset considering that the Applicants had insufficient time to comply with the publication requirements pursuant to the *Order* dated 29 May 2023.

The Commission has found TLI's *Second Manifestation with Urgent Motion* in order, and thus granted the same. In view thereof, the hearings set on 20 June 2023 and 27 June 2023, pursuant to the *Order* dated 29 May 2023 are cancelled.

ACCORDINGLY, the Commission hereby sets anew the instant *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference and presentation of evidence on the following dates and venue, or online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020⁹ and Resolution No. 01, Series of 2021¹⁰ (ERC Revised Rules of Practice and Procedure):

Date and Time	Platform	Activity
24 July 2023 (Monday) at two o'clock in the afternoon (2:00 P.M.)	MS Teams or Zoom Application	Determination of compliance with the jurisdictional requirements, and Expository Presentation
31 July 2023 (Monday) at two o'clock in the afternoon (2:00 P.M.)		Pre-trial Conference and presentation of evidence

⁹ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

¹⁰ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

Accordingly, IEC and TLI were directed to host the virtual hearings at **IEC's principal office located at Metro-Rei Business Park, Palindan, Ibaan, Batangas**, as the designated venue for the conduct thereof, and ensure that the same is open to the public and the community quarantine guidelines are observed at all times. Moreover, IEC and TLI shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

Any interested stakeholder may submit its comments and/or clarifications at **least one (1) calendar day** prior to the scheduled initial virtual hearing, via electronic mail (e-mail) at doCKET@erc.ph, and copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

Moreover, all persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at doCKET@erc.ph, and copy furnishing the Legal Service through legal@erc.ph, a verified Petition to Intervene at **least five (5) calendar days** prior to the date of the initial virtual hearing. The verified Petition to Intervene must follow the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicate therein the docket number and title of the case, and state the following:

- 1) The petitioner's name, mailing address, and e-mail address;
- 2) The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and
- 3) A statement of the relief desired.

Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may file through e-mail at doCKET@erc.ph, and copy furnish the Legal Service through legal@erc.ph, their Opposition or Comment thereon at **least five (5) calendar days** prior to the initial virtual hearing. Rule 9 of the ERC Revised Rules of Practice and Procedure shall govern. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:


- 1) The name, mailing address, and e-mail address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

All interested parties filing their Petition to Intervene, Opposition or Comment are required to submit the hard copies thereof through personal service, registered mail or ordinary mail/private courier, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Any of the persons mentioned in the preceding paragraphs may access the copy of the *Joint Application* on the Commission's official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled initial virtual hearings by providing the Commission, thru legal.virtualhearings@erc.ph, their respective e-mail addresses and indicating therein the case number of the instant *Joint Application*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL, and MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 13th day of June 2023 in Pasig City.


MONALISA C. DIMALANTA
Chairperson and CEO_M




LS: MVM / LSP / MCG